No. 98-1903

Supreme Court, U.S.
FILED
MAY 27 1999
OFFICE OF THE CLERK

IN THE
Supreme Court of the United States

_____ Term, 1999

ROGER DALE BENSON,

Petitioner

VS.

CHARLOTTE CARMACK BENSON

Respondent

On Petition For Writ Of Certiorari
To The Supreme Court of the State of Alabama

PETITION FOR WRIT OF CERTIORARI

ROGER BENSON
Pro Se Appellant
5685 County Road 14
Waterloo, Al 35677

24 pp

The Appellant in this matter contends that Alabama law places an undue burden on his right to the free exercise of his religion. Appellant asks this Court to decide whether this code section places an undue burden on the free exercise of his religion and is repugnant to the Constitution of the United States.

LIST OF PARTIES

[x] All parties appear in the caption of the case on the cover page.

[ ] All parties do not appear in the caption of the case on the cover page. A list of all parties to the proceeding in the court whose judgment is the subject of this petition is as follows:

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IN THE
SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

Petitioner respectfully prays that a writ of certiorari issue to review the judgment below.

OPINIONS BELOW

[x] For cases from state courts:

The opinion of the highest state court to review the merits appears at Appendix A to the petition and is

[ ] reported at _____; or,

[x] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the Court of Civil Appeals appears at Appendix B to the petition and is

[ ] reported at _____; or,

[x] has been designated for publication but is not yet reported; or,

[ ] is unpublished.

The opinion of the Court of Civil Appeals on Appellant's Application for Rehearing to this Court appears at Appendix C to petition and is

[ ] reported at _____; or

[x] has been designated for publication but is not yet reported; or

[ ] is unpublished.

The denial of relief by the trial court appears at Appendix D to the petition and is

[ ] reported at _____; or,

[ ] has been designated for publication but is not yet reported; or,

[x] is unpublished.

1. JURISDICTION

[ ] For cases from state courts:

The date on which the highest state court decided my case was February 26, 1999. A copy of that decision appears at Appendix A.

[N] A timely petition for rehearing was thereafter denied on the following date: _____, and a copy of the order denying rehearing appears at Appendix___.

[N] An extension of time to file the petition for a writ of certiorari was granted to and including _____(date) on _____(date) in Application No. A- ____.

The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S.C.A. Const. Amend 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

U.S.C.A. Const. Amend 14, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

No. _____

_____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

Roger Dale Benson - PETITIONER

VS.

Charlotte Carmack Benson - RESPONDENT

ON PETITION FOR A WRIT OF CERTIORARI TO

THE SUPREME COURT FOR THE STATE OF ALABAMA

PETITION FOR WRIT OF CERTIORARI

TO: THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES:

COMES NOW the Petitioner/Appellant, Roger Dale Benson, pro se Petitioner, and respectfully petitions this Honorable Court to review and reverse the decision and judgment of the trial Court which was affirmed by Court of Civil Appeals of Alabama and judgment rendered on July 31, 1998, which affirmed the trial court's denial of Appellant's Motion to Strike Section 30-2-1(a)(7) unconstitutional in Case number DR-96-616 of the Circuit Court of Lauderdale County, Alabama.

Petitioner/Appellant avers that he has duly filed an Application for Rehearing in the Court of Civil Appeals of Alabama and a Motion for Acceptance of Statement of Facts pursuant to Rule 39(k), ARAP, in this cause within the time allowed by law, raising the points hereinafter set forth, and that said Application for Rehearing and Motion were denied on October 16, 1998. A copy of

the opinion of the Appellate Court is attached to this Petition in Appendix B.

Petitioner further avers that he filed a Writ of Certiorari to the Alabama Supreme Court and said Writ was denied on May 26, 1999. Said denial is found in Appendix A to this petition.

Appellant contends the all the state courts involved in this matter erred in their denial of appellant's of Motion to Strike Down 30-2-1(a)(7) as being Unconstitutional. The Appellant contends the State or Appellee had to present some evidence at a hearing to justify the burden this statute placed upon the Appellant's free exercise of his religion. **Hernadez v. C.I.R., 490 U.S. 680, 109 S.Ct 2136, 104 L.Ed.2d 766, rehearing denied Graham v. C.I.R., 492 U.S. 933, 110 S.Ct. 16, 106 L.Ed.2d 630 (1989)** No hearing was held thereby preventing any such proof being presented. A hearing should have been held by the trial court. Further, Appellant claims the above-mentioned code section places an undue burden upon his right to the free exercise of his religion in violation of the **First and Fourteenth Amendments to the United States Constitution**.

WHEREFORE, THE PREMISES CONSIDERED, the Petitioner/Appellant urges that a Writ of Certiorari be issued from this Court to the Supreme Court of Alabama and that this Court proceed to review and correct the errors complained of and to reverse the judgments of the Supreme Court of Alabama, the Court of Civil Appeals for Alabama and the trial court and render such judgment as said Court should have rendered in addition to such other relief as Petitioner/Appellant may be entitled. Submitted herewith is a statement of reasons in support of this Petition.

Respectfully Submitted,

Roger Benson

ROGER BENSON
Pro Se Appellant
5685 County Road 14
Waterloo, Al 35677

STATEMENT OF THE CASE

On October 28, 1997, Appellant filed a Motion to Strike Section 30-2-1(a)(7) Unconstitutional. This motion was denied by the trial court without a hearing on the merits of the motion on October 28, 1997. See Appendix D for a copy of the Motion and its denial

REASONS FOR GRANTING THE PETITION

The Appellant argues the Supreme Court of Alabama erred in affirming the denial of his motion to strike down Section 30-2-1(a)(7) of the Code of Alabama, 1975, as amended, thereby allowing the lower courts to abuse their discretion. The Appellant here raised an issue which deals with the freedom to exercise one's religion. At a minimum the Supreme Court for the State of Alabama should have granted the Appellant's appeals and ordered a hearing on the motion. Upon review, this Court will see the Appellant's right to the free religion is significantly burdened by the uncontested divorce provisions found in 30-2-1(a)(7) of the Code of Alabama, 1975, as amended.

It is clear from the First Amendment the Founding Fathers of this country understood the importance of a person being able to exercise his religious beliefs without fear of governmental interference. This amendment applies to the states through the Fourteenth Amendment of the United States Constitution. **Cantwell v. Connecticut**, 310 U.S. 296, 60 S.Ct. 900, 84 L.Ed.2d 1213 (1940) The State of Alabama has to fashion its laws where they do not inhibit a person's ability to exercise their religion. Section 30-2-1(a)(7) places such a burden upon Appellant's Free Exercise rights.

Hernadez v. C.I.R., 490 U.S. 680, 109 S.Ct 2136, 104 L.Ed.2d 766, rehearing denied **Graham v. C.I.R.**, 492 U.S. 933, 110 S.Ct. 16, 106 L.Ed.2d 630 (1989) states the Free Exercise inquiry asked whether the government has placed a substantial burden on observation of a central religious belief or practice, and if so, whether a compelling governmental interest justifies that burden. The Appellant, in his motion to strike down this code section, clearly pointed out the burden this statute places on his religion. The State or the Appellee needed to show to the trial court the compelling governmental interest being justified by the burden placed upon Appellant's rights. The trial court did not do this and now the Alabama Supreme Court has allowed this error to stand.

In his motion, Appellant states he is a practicing Christian and is a member of the Holiness Church. Further he claims that as a practicing member of this body, he and the others members of his church believe in a strict interpretation of the Bible. On the basis of

the Holiness Church's interpretation of Matthew 5:32, this church believes adultery is the only ground upon which a divorce can be granted. To the Holiness, any ground outside of adultery violates their religious beliefs and practices. On the basis of the facts raised here, Section 30-2-1(a)(7) violates his right to free exercise. The law destroys a central belief to Appellant's religion because it allows a person to escape their marital responsibilities on grounds not based in the Bible nor based upon the Holiness interpretation of that Scripture. This is the burden placed on Appellant and his right to the free exercise of his religion.

The First Amendment states the following:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

Mr. Benson's Holiness belief takes the Bible literally. They believe that the only grounds for divorce is adultery which was commanded by God in Matthew 19:9. If a man or a woman does get a divorce for any other reason, they are not actually free. In the New Testament the Bible says in Matthew 19:9:

> And I say unto you, whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth adultery; and whoso marrieth her which is put away doth commit adultery."

If his wife never admitted committing adultery and does not commit adultery in the future, the Appellant could not remarry even if he wished to do so. He could not to remarry because the scripture says only the ground of fornication would make him free to remarry. Even if she does commit adultery and frees him and then if he decides to remarry, Timothy states in 1 Timothy 3:12, "Let the deacons be the husbands of one wife, ruling their children and their own houses well." Therefore he could never be a deacon or have any leadership role in the Holiness church. This limits his Freedom of Religion and also his religious beliefs. In Mark 10:12 it states: "And if a woman shall put away her husband, and be married to another, she committeth adultery." So according to the Bible, the Respondent

would not be a free woman from this marriage, that is, if Mr. Benson never commits adultery himself. There is a significant burden placed here on the Appellant.

When this world began in Genesis, it was God's decision to create a help mate for man, making them husband and wife and raising children together. Genesis 2:18 and 22 says,

> Verse 18: And the Lord God said, It is not good that the man should be alone; I will make him an help meet for him. Verse 22: And the rib, which the Lord God had taken from man, made he a woman, and brought her unto the man."

Matthew 19:6 states, "Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder." Church and State are separate matters. God did not need to ask the government for license when he joined together the first man and woman. The government has no business in the church's religion. **County of Allegheny v. Greater Pittsburgh ACLU, 492 U.S. 573 (1989).** The Establishment clause means that government may not promote or affiliate itself with any religion doctrine or organization, may not discriminate among persons on basis of their religious beliefs and practices, may not delegate governmental power to religious institution, and may not involve itself too deeply in institution's affairs. We are married before God. Basically we are only asking for license through the Government so they can keep records of our marriage. Almost everything that we do in the world the government tries to control. However, the First Amendment says the government has no control over our religious beliefs. Mr. Benson's religion is taking a wife and marrying her and that marriage is a religious institution between him and his wife. Just because the husband or the wife disagree with the marriage doesn't give the government right to say that they can break this religious institution between the husband, the wife and God. The Bible reads in Matthew 19:6, "Wherefore they are not more twain, but one flesh. What therefore God hath joined together, let no man put asunder." I know a person has to buy a license to show that you are married, but Church and State are separate matters and have been made separate by the First Amendment. **School District of**

Abington Township, Penn. V. Edward Lewis Schempp, 374 U.S. 204 (1963) states:

> The Establishment Clause of the First Amendment prohibits a fusion of government and religious functions or a concert or dependency of one upon the other to the end that official support of the state and federal government would be placed behind tenets of one or all orthodoxies. U.S.C.A. Constitution Amendments 1, 14

This case shows that Church and State are to be separate matters and the government has no business interfering with matter involving any religious belief.

Only by the pleading of Moses to God for the Pharisees for a bill of divorcement. God finally told Moses the only reason would be for fornication. The government cannot separate what God has joined together. Husband and wife, being joined together by the ordinance of God, are not to be put asunder by any ordinance of man. In Matthew 19:3-9, the Bible states:

> The Pharisees also came unto him, tempting him, and saying unto him, Is it lawful for a man to put away his wife for any cause? And he answered and said unto them, Have ye not read, that he which made them at the beginning MADE THEM MALE AND FEMALE, And said, FOR THIS CAUSE SHALL A MAN LEAVE FATHER AND MOTHER, AND SHALL CLEAVE TO HIS WIFE: and they twain shall be one flesh? Wherefore they are no more twain, but one flesh. What therefore God hath joined together, let not man put asunder. They say unto him, Why did Moses then command to give a writing of divorcement, and to put her away? He saith unto them, Moses because of the hardne s of your hearts suffered you to put way your wives: but from the beginning it was not so. And I say unto you, Whosoever shall put away his wife, except it be for fornication, and shall marry another, committeth

adultery: and whoso marrieth her which is put away doth commit adultery."

This ordinance of God, which is the basis for Holiness belief regarding marriage, cannot be infringed upon by the laws of a State. The statute needs to struck by this Court as being violative of the First Amendment as it applies to the states through the Fourteenth Amendment.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

Roger Dale Benson

ROGER DALE BENSON
PRO SE APPELLANT

Date: 5-26-99

APPENDIX A

IN THE SUPREME COURT OF ALABAMA
February 26, 1999

1980220

Ex parte Roger Dale Benson. PETITION FOR WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEARS (In re: Roger Dale Benson v. Charlotte Carmack Benson)
(2970507) (Lauderdale Cir.Ct.No.: DR-96-616)

CERTIFICATE OF JUDGMENT
Writ Denied

The above cause having been duly submitted, IT IS CONSIDERED AND ORDERED that the petition for writ of certiorari is denied.

NO OPINION.

COOK, J. - Hooper, C.J., and Houston, Lyons, and Johnstone, JJ., concur.

I Robert G. Esdale, Sr., as Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing is a full, true and correct coy of the instrument(s) herewith set out as same appear(s) of record in said Court.

Witness my hand this 26th day of Feb., 1999.

"s/Clerk, Supreme Court of Alabama

APPENDIX B

October 16, 1998

THE COURT OF CIVIL APPEALS OF ALABAMA

RE: **2970507**

Roger Dale Benson v. Charlotte Carmack Benson (Appeal from Lauderdale County Circuit Court: DR 96-616).

You are hereby notified that the following action was taken in the above cause by the Court of Civil Appeals:

Application for Rehearing Overruled. No opinion written on rehearing. 39 (k) Motion Denied.

"s/John H. Wilkerson, Jr., Clerk
Court of Civil Appeals
Court of Civil Appeals
300 Dexter Avenue
Montgomery, AL 36104-3741
(334) 242-4095

APPENDIX C
STATE OF ALABAMA—JUDICIAL DEPARTMENT
THE COURT OF CIVIL APPEARS
SPECIAL TERM, 1998

2970507

Roger Dale Benson v. Charlotte Carmack Benson, Appeal from Lauderdale Circuit Court (DR-96-616).

YATES, Judge

AFFIRMED. NO OPINION.

See Rule 53 (a) (1) and (a) (2) (F), Ala. R. App. P.; Transamerica Commerical Fin. Corp. v AmSouth Bank, N.A., 608 So. 2d 375 (Ala. 1992); Winfrey v. Winfrey, 602 So. 2d 904, 905 (Ala. Civ. App. 1992); Johnson v. Johnson, 565 So. 2d 629 (Ala. Civ. App. 1989); Shepherd v. Shepherd, 531 So. 2d 668 (Ala. Civ. App. 1988); and Rule 28, Ala. R. App. P.

Robertson, P.J., and Monroe, Crawley, and Thompson, JJ., concur.

John H. Wilkerson, Jr., Clerk of the Court of Civil Appeals of Alabama, do hereby certify the foregoing is a full, true and correct copy of the instrument(s) herewith set out as same appears of record in said court.

Witness my hand this 31st day of July, 1998.

"s/John H. Wilkerson, Jr."

Clerk. Court of Civil Appeals of Alabama

APPENDIX D

STATE OF ALABAMA
COUNTY OF LAUDERDALE

IN THE CIRCUIT COURT
CASE NO: DR-96-616

IN RE: THE MARRIAGE OF
CHARLOTTE CARMACK BENSON
Petitioner,
and
ROGER DALE BENSON,
Respondent,

MOTION TO STRIKE SECTION 30-2-1(a)(7) AS BEING UNCONSTITUTIONAL

Comes now the Respondent in this matter and respectfully requests this Court to declare Section 30-2-1(a)(7) of the Code of Alabama, 1975, as amended, unconstitutional since this is violative of Respondent's First Amendment right to the Free Exercise of his religion. In support of this, Respondent states as follows:

1. Respondent is a practicing Christian and is a member of the Holiness Church.

2. As a practicing member of this body, he and the others believe in a strict interpretation of the Bible.

3. The Bible, in Matthew 5:32, states only adultery is an acceptable reason for granting a divorce.

4. Section 30-2-1(a)(7) states the following:

> **§ 30-2-1. Grounds; jurisdiction for proceedings; divorce judgment awarded to both parties.**
>
> (a) The circuit court has power to divorce persons from the bonds of matrimony, upon a complaint filed by one of the parties, entitled "In re the marriage of . . . . . and . . . . . ," for the causes following:

DENIED 10-28-97
"s/Ned Michael Suttle, Judge

(7) Upon application of either the husband or wife, when the court is satisfied from all the testimony in the case that there exists such a complete incompatibility of temperament that the parties can no longer live together.

5. Although this code section reserves the right to seek a divorce based on adultery, it further expands the grounds for divorce outside of this area. The expansion prohibits Respondent's right to the Free Exercise of his religious beliefs because it allows his wife to seek a divorce on grounds other than adultery. There has not been any allegation of adultery by either party in this matter. Therefore, based on Respondent's religious beliefs, the Petitioner in this matter has no grounds upon which she can seek a divorce since she failed to allege adultery against this Respondent.

6. The First Amendment to the United States Constitution states that Congress shall make no law prohibiting the free exercise of religion. This amendment applies to the State of Alabama through the 14th Amendment to the United States Constitution. The divorce statute as stated in 30-2-1(a)(7) prohibits Respondent's free exercise by allowing his spouse the opportunity to seek a divorce on grounds not permitted by the Bible, i.e., on the grounds of adultery. This is in direct contradiction to Respondent's right of Free Exercise.

WHEREFORE THE PREMISES CONSIDERED, Respondent requests this Court strike down this section as being unconstitutional on the grounds stated above.

Respectfully Submitted,

"s/James P. Atkinson-ATK 004
Attorney for Respondent
205 S. Seminary Street Suite 214
Florence, AL 35630
(205)740-8328

CERTIFICATE OF SERVICE

I hereby certify that I have served a copy of the foregoing pleading upon:

Roy Edgar Long
COLLIER & LONG
102 S. Court Street
Suite 412
Florence, AL 35630

by hand-delivering a copy of the above Motion to the address above on this the 28th day of October 1997.

"s/ James P. Atkinson

I hereby certify that I have served the Office of the Attorney General via fax on this the 28th day of October 1997 and further certify that I have mailed a copy, postage prepaid and properly addressed to his office located at the following:

Office of the Attorney General
11 S. Union Street
Montgomery, AL 36130

No. _____

_____

IN THE
SUPREME COURT OF THE UNITED STATES

_____

ROGER DALE BENSON - PETITIONER
VS.
CHARLOTTE CARMACK BENSON - RESPONDENT(S)

PROOF OF SERVICE

I, ROGER DALE BENSON do swear or declare that on this date, May 26, 1999, as required by Supreme Court Rule 29 I have served the enclosed PETITION FOR A WRIT OF CERTIORARI on each party to the above proceeding or that party's counsel, and on every other person required to be served, by depositing an envelope containing the above documents in the United States mail properly addressed to each of them and with first-class postage prepaid.

The names and addresses of those served are as follows:

Roy Edgar Long
Attorney for Respondent
COLLIER & LONG
102 S. Court Street
Suite 412
Florence, AL 35630

I declare under penalty of perjury that the foregoing is true and correct.

Executed on May 26, 1999

Roger Dale Benson
ROGER DALE BENSON